

TO:

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## Response to Crypto asset secondary service providers: Licensing and custody requirements Consultation Paper

We thank you for the opportunity to contribute to the consultation.

We applaud any and all effort exerted to encourage a thriving, safe and competitive digital asset economy through appropriate regulation which puts Australia and Australians at the forefront of this vibrant and important economy.

We note with enthusiasm that the proposed licensing regime for CASSPrs is a valiant first effort. It is, however, wanting for the following reasons:

### 1. Clarification of Regulatory Perimeter Required

It is not clear why the proposed regulatory perimeter is set to capture CASSPrs alone. There is no explanation as to why Issuers of digital assets are excluded, nor why DeFi protocols are excluded. Our concern is that the delineation of the appropriate regulatory perimeter lacks explanation and if implemented, will inevitably produce asymmetry within and across the digital asset ecosystem. Our fear is that the consequences of producing a regulatory framework that focuses on a subsection, and centralised components of a fundamentally decentralised economy have not been appropriately considered.

### 2. Addressing and restatement of policy fundamentals

We wholeheartedly agree with the position put forward by Blockchain & Digital Assets Services and Law (BADASL) and note the significant challenge facing all regulators in accomplishing markets for fair, transparent and orderly digital asset trading, within a robust, safe and sustainable decentralised financial ecosystem in which consumers are safe, innovation thrives and Australia remains competitive.

We cannot overstate the significance of first resolving foundational policy issues in order to achieve these objectives, specifically the characterisation of DAOs for legal and tax purposes, clarification of fully fiat-collateralised fiat currency pegged stablecoins as "money" and "currency" and most importantly, engaging in a crucial paradigm shift where digital asset regulation is achieved through an "actions not attributes" approach.

We feel that the BADASL submission articulates these matters best and cannot insist more fervently that a regulatory regime based not on regulation of digital assets further to their characteristics and features exhibited at time of issue by an issuer, but in relation to the activities or actions that those assets are applied to is absolutely essential. We see no utility in token mapping that does not adopt an "actions not attributes" approach to taxonomy.

### **3. Regulatory arbitrage is inevitable and Australia's seat at the table is far from certain**

The race to produce an attractive regulatory framework in which innovation may thrive, with ample talent, capital access and operational certainty is on. It is not a race worth losing. To be in it, Australia must seize the opportunity to produce an easily navigable regulatory framework for digital assets, including clarity and seamlessness as to the interrelationship of that framework with financial products and services regulation, including in particular, alignment with regulatory frameworks for market licensing, custody and Australia's payments system. Respectfully, the proposed CASSPr regime does not achieve this. Work must be done to appropriately appreciate, then address the regulatory challenges posed by an inherently transjurisdictional, decentralised, composable, open-source, infinitely programable technology. Work must be done to produce flexible, future-proof regulation that provides room for growth. The law is not foreign to such challenges. The law is not incapable of, but historically limps at a considerable pace behind, innovation. It cannot afford to do so in such a competitive race. Maritime Law offers us hope. In it we can find seeds of inspiration where unique mechanisms of enforcement and substantive areas of law evolved to meet the challenges of the day. To meet the challenges of this day, and future days, a pragmatic, informed, multi-agency, internationally coherent approach to regulating digital assets and DLT is essential where industry collaboration, global perspective and an innovation-first agenda produce a north-star from which regulatory approaches may be navigated.

We welcome the opportunity to expand upon this high level submission.

**Regards,**  
**Victoria Wells**  
**Principal, Alt Law**